

CITY OF KIRKLAND
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PLANNING AND COMMUNITY DEVELOPMENT

To: Hearing Examiner

From: Judd Tuberg, CCEO
City of Kirkland
Code Enforcement Officer

Date: August 18, 2011

Subject: **CODE ENFORCEMENT HEARING REGARDING THE USE OF THE NORTHWEST UNIVERSITY (NU) FORMER SEAHAWK PRACTICE FIELDS; 11220 NE 53RD STREET, KIRKLAND, WA; ENF 11-088**

I. INTRODUCTION

City of Kirkland staff ("staff") offers this staff report with regard to the above-referenced Code Enforcement matter.

II. ISSUES PRESENTED

- A. Whether Northwest University (NU) has allowed unauthorized soccer practices and games or sports soccer training camps at the former Seahawks practice fields during the spring and summer of 2011, in violation of NU Change of Use Zoning Permit, PCD file No. ZON08-00020.
- B. Whether NU violated the Change of Use Zoning Permit, the application for which states that, "the former practice fields will be used exclusively by Northwest University practices and intramural activities."
- C. Whether NU is subject to fines pursuant to KMC 1.12.040 based on nine documented days of unauthorized activity on the fields.

III. BACKGROUND

- A. After the Seahawks discontinued use of their facilities at NU, NU sought through a Process IIB permit as required by KZC 60.12.010 Special Regulation 3.d.4) to allow use of the former Seahawks building and student use of the fields. This section states that, "A Process IIB zoning permit review process is required: ...For a change in all or any part of the Seahawks facility to a use other than a professional football team office and practice facility." On April 27, 2009, the City approved NU's requested Process IIB permit (Exhibit 1).
- B. The permit application (Exhibit 2, E-page 260) indicates that the fields would be used for the exclusive use of Northwest University athletic practices and intramural activities.
- C. During the hearing (Exhibits 3, 4 & 5) the applicant stated that, "While there are all sorts of opportunities to better utilize the facility, especially the practice fields, these proposals will not be ready for an application until we have worked more with our neighbors, until we have had an opportunity to consider partnerships including proposed partnership with the City of Kirkland Parks Department and developed a fully integrated plan with consultants and architects." (Exhibit 4, p. 5). The applicant had the opportunity to describe a broader use of the fields for public review and approval, but chose not to.
- D. By way of background, during April-May, 2010, staff investigated and confirmed complaints of numerous lacrosse practices and games involving Kirkland Youth Lacrosse ("KYL") at NU practice fields rented to KYL. On April 19, 2010, staff issued a Notice of Violation and Order to Correct to NU, and issued 3 Notices of Civil Infraction to NU for KYL practices or games at the NU practice fields held on May 1, May 8, and May 15, 2010, with a fine of \$100.00 for each violation (\$300.00 total fines) (File No. ENF 10-059). NU did not appeal and paid \$300.00 to the City on June 1, 2010 (Exhibit 6).
- E. Subsequently, in May 2010 staff investigated a complaint that NU was allowing or authorizing the use of the 3 former Seahawks practice fields for soccer sports, camps, clinics and academies for a fee to off campus youth from age 6 to 18 who were not academically enrolled or otherwise affiliated with NU. Staff confirmed violations and issued a Notice of Violation and Order to Correct to NU on May 20, 2011, followed by a Notice of Civil Infraction on June 17, 2011 (File No. ENF 10-069). NU did not appeal the Notice. On June 20, 2010, staff confirmed a NU sports soccer academy violation of the KZC, and fined NU \$100. On August 9, 10, 11, 12, and 13, 2010, staff confirmed NU sports soccer camps were operating in violation of the permit and fined NU \$500.00. On August 26,

2010, staff sent NU a demand payment letter for fines of \$600.00, and received no response from NU (Exhibit 7).

- F. During May, June, July, and August 2011, staff investigated several complaints alleging frequent organized soccer practices at the NU practice fields. With the assistance of several neighbors who reside near the NU practice fields staff was able to confirm a pattern of practice field use on specific dates by off-campus soccer teams comprised of persons unaffiliated with NU (Cedar Park High School soccer team, U-17 girls soccer team and Crossfire girls soccer team). Exhibit 10a includes the email conversation between the neighbors and City describing the use. Exhibit 10b includes the email conversation between the City and NU regarding the use. As a result of all of this information, the City determined that this use of the practice fields violated the Change of Use Permit. Staff therefore issued a Notice of Civil Violation for violating Zoning Permit, PCD File No. ZON08-00020 (File No. ENF 11-088) (Exhibit 8).
- G. Said Notice of Civil Violation was issued by the City to NU on June 17, 2011. Following a Motion for Clarification by NU during the June 22, 2011 prehearing conference, a new Notice of Civil Violation was issued on July 6, 2011, through counsel (Exhibit 8).

IV. ANALYSIS

This portion of the staff report analyzes the following issues:

A. Violation of Zoning Permit

In the Code Enforcement Chapter KMC 1.12, Section 020.K.8 defines "Regulation" as, "The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city." Therefore, the terms of the aforementioned Change in Use zoning permit may be enforced by the city just as a regulation is enforced by using the provisions in the KMC.

NU allowed the fields to be used by non-NU students in 2010 and 2011. The neighbors emailed the City when the fields were in use and described the users. NU acknowledged that the lacrosse players using the fields in 2010 were not in compliance with the permit and paid the fine. NU has not acknowledged that other user groups violated the permit. The City contends that the Cedar Park High School soccer practices, the U-17 girls soccer teams, the Crossfire girls soccer team, the youth summer soccer camps (advertised in the Kirkland Reporter in Exhibit 9) all were beyond what the City and public anticipated after the hearing and decision on the Change of Use permit. Even if there were NU students running camps, or NU faculty or trainers running soccer practices for recruitment, that is not what was described in the application nor presented by

NU at the public hearing.

B. Meaning of the words

The City contends that NU is not living up to the application it presented to the City for the Change in Use Permit. The neighbors did not testify at the hearing because they were comfortable that NU would not use the fields beyond their own student use. The City relied on the material presented when making the decision on the permit. With reference to the phrase, "exclusive use by Northwest University athletic practices and intramural activities" ... the term "exclusive" is defined as, "limiting or limited to possession, control, or use by a single individual or group, excluding others from participation," by Webster's on-line dictionary. "Intramural" is defined as, "competed only within the student body, e.g. (intramural sports)," by Webster's on-line dictionary. The phrase is meant to define use of the fields by NU students participating in sports with one another and not with outside groups or schools. This is the meaning the City and public understood and relied upon.

C. Fines

The amount of the monetary penalty per day or portion thereof is \$100: Kirkland Municipal Code 1.12.040. Monetary fines of \$100.00 per day for 9 (nine) violation dates* or \$900.00 are accessible against NU commencing July 6, 2011, the date the new (2nd) Notice of Civil Violation was issued to NU counsel of record, through August 15, 2011. *(Violation dates are July 6, 2011, July 11, 2011, July 19, 2011, July 21, 2011, July 28, 2011, August 9, 2011, August 10, 2011, August 11, 2011, and August 12, 2011). The City also seeks additional \$100.00 per day fines for any additional violations that may occur in the future.

V. CONCLUSION

In summary, there has been a pattern of field use that is not in accordance with the public expectation set out in the zoning permit. It is not the City's intent is to leave fields vacant when many user groups are in need of space to practice and play. The code is clear that a change in use of the former Seahawk practice facility needs to be reviewed through a public process. NU stated during the public hearing that the appropriate process would be followed when NU had determined how it wanted to use the fields. NU has not applied for nor received the City approvals to use the fields in the manner seen over the last two summers.

The City contends that the exhibits attached, along with the testimony presented demonstrate that a violation of the Change of Use Permit ZON08-00020 has occurred. We ask that the Hearing Examiner make a decision that the use of the fields is exclusively for NU students and not outside groups until approved in the manner set out by code.

Further, the City asks that the Examiner clearly define the appropriate use of the fields in a written decision and assess fines.

The List of Witnesses and Exhibits for this case were submitted on August 5, 2011 and can be accessed at the following link:

http://www.kirklandwa.gov/depart/Planning/Hearing_Examiner_Meeting_Information.htm

The Exhibits contained in the list are the following:

Part 1

1. Northwest University Change of Use Permit Resolutions.
2. Northwest University Change of Use Permit Staff Memo.

Part 2

3. Minutes of Feb. 23, 2009 Joint Houghton Community Council and Hearing Examiner Meeting for File No. ZON08-00020.
4. Partial Transcripts from same Feb. 23, 2009 Meeting.
5. Complete Audio Recording of same Feb. 23, 2009 Meeting.
Audio recordings can be found at the following link:
http://kirkland.granicus.com/MediaPlayer.php?view_id=16&clip_id=1437
6. 2010 Complaints (6), Notice of Violation (1), and Notices of Civil Infraction (3) regarding use of the fields by Kirkland Youth Lacrosse.
7. 2010 Complaints (1), Notice of Violation (1), and Notice of Civil Infraction (1) regarding use of the fields by non-resident, off-campus youth or adults not academically enrolled at Northwest University.

Part 3

8. 2011 Complaints (7) and Notice of Civil Violation (1) regarding use of the fields by persons not academically enrolled or otherwise affiliated with Northwest University.

- 9. 2010 and 2011 on-line and Kirkland Reporter advertisements of soccer camps at the practice fields.
- 10A. Email regarding 2011 soccer practice.
- 10B. Northwest University response.

Part 4

- 11A. Timeline prepared by Marie and Larry Toedtli.
- 11B. Email compiled by Marie and Larry Toedtli.

Part 5

- 11C. Photographs compiled by Marie and Larry Toedtli.
- 12A. August 2, 2011 letter to the Hearing Examiner from Todd Gauthier
- 12B. Information presented to Kirkland City Council on April 20, 2010 by Todd Gauthier